

AMENDED IN SENATE AUGUST 13, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2470

Introduced by Assembly Member Jackson

February 21, 2002

An act to add Sections 1551.2, 1568.0652, 1569.512, and 1596.8872 to the Health and Safety Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 2470, as amended, Jackson. Minors: statements.

Under existing law, evidence of a statement that was made other than by a witness while testifying at a hearing and that is offered to prove the truth of the matter stated as hearsay evidence is inadmissible, unless otherwise specified by law.

Existing law provides that certain statements made by a minor child under 12 years of age out of court may not be inadmissible under the hearsay rule in certain circumstances with respect to the establishment of the elements of certain crimes.

Existing law provides that hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Existing law authorizes the administrative law judge conducting a hearing with respect to the licensing, registration, or permitting of a community care facility, residential care facility for persons with chronic life-threatening illness, residential care facility for the elderly, or child day care facility to permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is

developmentally disabled, to be taken outside the presence of the respondent or respondents if certain conditions exist.

This bill would specify that certain ~~hearsay~~ *out-of-court* statements made by a minor under 12 years of age who is the subject of an allegation at issue in an administrative hearing shall be admissible in any of those types of administrative hearings unless an objection is made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1551.2 is added to the Health and Safety
2 Code, to read:

3 1551.2. (a) (1) ~~Hearsay evidence of a~~ *An out-of-court*
4 *statement made by a minor under 12 years of age who is the subject*
5 *or victim of an allegation at issue is admissible evidence at an*
6 *administrative hearing conducted pursuant to this article. The*
7 ~~hearsay evidence out-of-court statement~~ *may be used to support*
8 *a finding of fact unless an objection is timely made and the*
9 *objecting party establishes that the statement is unreliable because*
10 *it was the product of fraud, deceit, or undue influence. However,*
11 *the out-of-court statement may not be the sole basis for the finding*
12 *of fact, unless the adjudicator finds that the time, content, and*
13 *circumstances of the statement provide sufficient indicia of*
14 *reliability.*

15 (2) The proponent of the statement shall give reasonable notice
16 to all parties of the intended introduction of the statement at the
17 hearing.

18 (3) For purposes of this subdivision, an objection is timely if it
19 identifies with reasonable specificity the disputed ~~hearsay~~
20 ~~evidence out-of-court statement~~ and it gives the proponent of the
21 evidence a reasonable period of time to prepare a response to the
22 objection prior to the hearing.

23 (b) This section shall not be construed to limit the right of any
24 party to the administrative hearing to subpoena a witness whose
25 statement is admitted as evidence or to introduce admissible
26 evidence relevant to the weight of the hearsay evidence or the
27 credibility of the hearsay declarant.

SEC. 2. Section 1568.0652 is added to the Health and Safety Code, to read:

1568.0652. (a) (1) ~~Hearsay evidence of a~~ *An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The ~~hearsay evidence~~ out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.*

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed ~~hearsay evidence~~ *out-of-court statement* and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

SEC. 3. Section 1569.512 is added to the Health and Safety Code, to read:

1569.512. (a) (1) ~~Hearsay evidence of a~~ *An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The ~~hearsay evidence~~ out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and*

1 *circumstances of the statement provide sufficient indicia of*
2 *reliability.*

3 (2) The proponent of the statement shall give reasonable notice
4 to all parties of the intended introduction of the statement at the
5 hearing.

6 (3) For purposes of this subdivision, an objection is timely if it
7 identifies with reasonable specificity the disputed ~~hearsay~~
8 ~~evidence~~ *out-of-court statement* and it gives the proponent of the
9 evidence a reasonable period of time to prepare a response to the
10 objection prior to the hearing.

11 (b) This section shall not be construed to limit the right of any
12 party to the administrative hearing to subpoena a witness whose
13 statement is admitted as evidence or to introduce admissible
14 evidence relevant to the weight of the hearsay evidence or the
15 credibility of the hearsay declarant.

16 SEC. 4. Section 1596.8872 is added to the Health and Safety
17 Code, to read:

18 1596.8872. (a) (1) ~~Hearsay evidence of a~~ *An out-of-court*
19 *statement made by a minor under 12 years of age who is the subject*
20 *or victim of an allegation at issue is admissible evidence at an*
21 *administrative hearing conducted pursuant to this article. The*
22 ~~hearsay evidence~~ *out-of-court statement* may be used to support
23 a finding of fact unless an objection is timely made and the
24 objecting party establishes that the statement is unreliable because
25 it was the product of fraud, deceit, or undue influence. *However,*
26 *the out-of-court statement may not be the sole basis for the finding*
27 *of fact, unless the adjudicator finds that the time, content, and*
28 *circumstances of the statement provide sufficient indicia of*
29 *reliability.*

30 (2) The proponent of the statement shall give reasonable notice
31 to all parties of the intended introduction of the statement at the
32 hearing.

33 (3) For purposes of this subdivision, an objection is timely if it
34 identifies with reasonable specificity the disputed ~~hearsay~~
35 ~~evidence~~ *out-of-court statement* and it gives the proponent of the
36 evidence a reasonable period of time to prepare a response to the
37 objection prior to the hearing.

38 (b) This section shall not be construed to limit the right of any
39 party to the administrative hearing to subpoena a witness whose
40 statement is admitted as evidence or to introduce admissible

- 1 evidence relevant to the weight of the hearsay evidence or the
- 2 credibility of the hearsay declarant.

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